

Evaluation of the Virginia Exile Program Interim Report

To the
Virginia Secretary of Public Safety

Virginia Department of Criminal Justice Services

Criminal Justice Research Center

August 2001

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I. Executive Summary

On July 1, 1999, three Virginia Code statutes were enacted to impose mandatory minimum sentences and increase penalties for certain firearms offenses (see Appendix 1). The Virginia Exile program was created in January 2000 to provide grant funds to supplement prosecution of these offenses. The program's purpose is to reduce gun-related violence in the participating localities by arresting and convicting persons who violate these statutes. The program philosophy also emphasizes communication of the Exile message to the public through local media outlets. The Department of Criminal Justice Services, Evaluation Unit received a request from the Secretary of Public Safety and the Governor of Virginia to conduct an evaluation of the Virginia Exile program.

This interim evaluation report summarizes program implementation and preliminary case outcomes for six program sites: Chesapeake, Halifax County, Lynchburg, Petersburg, Richmond, and Roanoke. Beginning in Spring 2000, descriptive and process information were collected through site visits and interviews of Exile program staff. In addition, case-specific data for this report were collected on all Virginia Exile cases prosecuted from January 2000 through May 2001.

Two Virginia Exile program elements were implemented fairly consistently across the six localities: enhancing prosecutorial resources and initiating a community media campaign. Each program used grant funds to provide additional resources for Virginia Exile prosecutions. Grant funds were also used to support public awareness efforts such as television advertising, billboards, bus signs, and other promotional strategies. Progress towards other required program components, such as developing local non-profit Exile foundations, establishing local coordination and training teams, and enhancing data base systems, varied somewhat across sites.

Interim evaluation findings revealed 310 cases in which Virginia Exile charges had been brought against a defendant. Almost half of these cases originated in Richmond. Of the six Virginia Exile offenses, three (*possession of schedule I or II drugs while in possession of a firearm, possession of a firearm by a non-violent felon, and possession of a firearm by a violent felon*) comprise 96% of all Virginia Exile charges brought. The three remaining Exile offenses (*distribution of schedule I or II drug while in possession of a firearm, distribution of over one pound of marijuana while in possession of a firearm and possession of a firearm while on school property*) were rarely charged (4%). Virginia Exile defendants were most often African-American males between the ages of 18 – 44. A total of 88 Virginia Exile cases were ultimately transferred to the federal court system.

Available data further indicated that 81% of cases involved the seizure of at least one firearm, most of which were handguns (61%). In addition, controlled substances were confiscated in 55 cases, with cocaine seized in 71% of these cases.

Of all cases that were eventually indicted to Circuit Court, 65 (56%) resulted in a Virginia Exile conviction. Of those 65 convictions, 62 (95%) received the mandatory minimum sentence.

Although the Virginia Exile program is based on the federal Project Exile program, comparisons of conviction outcomes between these two systems are not advisable. Cases accepted for prosecution at the federal level are reportedly “clean,” that is, charges are accurate and evidence is typically viewed as sufficient to achieve a conviction. However, Virginia Exile prosecutors report that they sometimes receive cases with inaccurate charges and unreliable evidence, which may comparatively reduce conviction rates for the local prosecutor.

In general, prosecutors and staff reported favorable impressions of the Virginia Exile program. Most felt that the program provides additional tools to get the “bad guys” off the street. In addition, anecdotal reports suggested that fewer criminals may be carrying guns. However, some notable problems were also identified. Questions regarding the functionality of the statutes were raised, suggesting that the real world application of the Virginia Exile statutes is not as straightforward as it may appear. For example, 35% of all Virginia Exile defendants were granted bail, despite the statutory presumption of no bail for offenders with these charges. Thus, both magistrates and judges granted bail in many instances, perhaps due to limited training or perceived conflicts with other Virginia Code provisions that guide bail decisions. In addition, while program guidelines require prosecutors to object to adverse bail decisions, data show that this occurred in only 8% of cases. Some Exile prosecutors indicated that reversals are quite uncommon, and they see this activity as a fruitless investment of time under some circumstances.

Both interviews and case-specific data indicate that the program’s deterrent effect may be compromised by the lack of certain punishment. The knowledge that possessing an illegal firearm will result in a long prison sentence is a foundational premise of the Virginia Exile program, as well as the federal Project Exile program on which it is modeled. However, the certainty of a full conviction may be diminished by the normal practices and discretion inherent in the judicial process. Evidentiary issues involving burden of proof, such as witness reliability, proof of firearm operability, constructive possession and prior felonies, also impact the ability to achieve a conviction on the Virginia Exile statutes.

Another noteworthy challenge involved establishing non-profit foundations for fund-raising and developing local public awareness campaigns. While some localities had success with these efforts, others reported significant difficulties due to limited resources and public support. Because the media component is a basic premise to successful implementation, intended program impacts may be affected by these difficulties.

In sum, these conclusions reveal both positive (e.g., number of firearms seized) and challenging (e.g., substantial departures from the no-bond presumption statute) aspects of the Virginia Exile program. Based on the interim findings, evaluators developed a number of preliminary recommendations that address the following issues:

- training to reinforce Virginia Exile statute provisions for magistrates and judges,
- enhanced training on Virginia Exile issues for local law enforcement,
- development of a coordinated training curriculum for Exile program sites,
- review of grant program requirements to assess practicality,
- provision of technical assistance to establish foundations and coordinated media efforts, and
- review of the scope of the Virginia Exile program.

Specific information that explains and supports each recommendation is located in the complete report.

While more than one year of Virginia Exile program data has been examined, continued evaluation is necessary to soundly assess program impacts. For example, this report does not address the effects of Virginia Exile on the incidence of gun-related crime in these localities. This and other issues will be addressed in a final report of the evaluation of Virginia Exile.

II. Report Authority and Purpose

In 1999, the Virginia General Assembly passed legislation (§18.2-308.1, §18.2-308.2, §18.2-308.4) to impose mandatory minimum sentences for selected firearm-related crimes. In January 2000, the Department of Criminal Justice Services (DCJS) awarded Virginia Exile grant funds to six localities to enable them to devote additional resources for the prosecution of certain weapon-related cases. The DCJS Research Center, Evaluation Unit was asked by the Governor and the Secretary of Public Safety to evaluate the Virginia Exile program. This document serves as an interim report on the evaluation effort.

This report describes the implementation of the grant program and the activities funded from January 2000 through May 2001. It reviews each local program and related program data, as well as offers recommendations on how to improve the program and its processes.

III. Review of Related Research

The primary objective of the Virginia Exile grant program, as stated by the program guidelines, is to reduce firearm-related violence in participating localities. This objective is to be accomplished via mandatory sentencing enhancements that serve to incapacitate gun offenders by lengthening the duration of their incarceration, and through a public awareness campaign intended to deter potential firearm offenders.

Virginia Exile and other similar programs may be viewed as a response to findings that fatality rates for gun crimes are much higher than for crimes committed without guns (Cook and Moore, 1995). Attempts to address the effects of firearm-related violence generally stem from two perspectives. Proponents of gun control suggest that gun owners should relinquish certain firearms rights in the interest of reducing gun-related fatalities. Conversely, anti-control advocates suggest that, in addition to being a constitutional right, gun ownership serves to reduce crime when used as a tool for self-defense. Lengthened mandatory penalties for gun crimes, such as the sentencing statutes that fall under the Virginia Exile program, can be described as a “non-gun control” method of reducing gun-related violence (Cook and Moore, 1995). These methods are popular with lawmakers because they presumably stem gun violence without encroaching on the rights of law-abiding gun owners (Loftin, Heumann, and McDowall, 1983).

The widespread use of mandatory minimums is a product of changing philosophies on criminal justice sentencing that has occurred in recent decades. In the 1970’s, the American criminal justice system was characterized by a sentencing system “in which legislatures set maximum authorized sentences [and] judges chose among imprisonment, probation, and fines and set maximum sentences” (Tonry, 1999a). Tonry suggests, however, that the present American criminal justice system is characterized by past decades of growth in jail and prison populations; reduced judicial discretion in sentencing decisions; lengthened sentences for violent offenders;

and a reluctance to promote “soft” policies, such as rehabilitation, in light of the popular “tough on crime” stance that has become the concern of many elected officials (Tonry, 1999b). Some have proposed that such a perspective is favored politically because it communicates to the public that there are certain crimes that deserve more stringent punishment (Parent, Dunworth, McDonald, and Rhodes, 1997).

By 1994, every state had adopted mandatory minimum sentencing laws as one facet of this increasingly rigorous approach to crime. Mandatory minimums, such as those legislated under Virginia Exile, have two main objectives: deterrence of potential offenders and incapacitation of current offenders by incarcerating them for relatively longer periods of time. They are also intended to reduce judicial discretion, thereby decreasing disparity in sentencing for similar crimes (Parent, et al., 1997).

While there is little research aimed at evaluating the effectiveness of mandatory sentencing in reducing firearm-related violence, some supporting evidence exists. A study of the Bartley-Fox Amendment in Massachusetts, which mandated a one-year prison sentence for anyone carrying a gun without a license, indicated a short-term effect of reducing homicide rates as well as assaults and robberies involving firearms. Additionally, criminals became more likely to commit crimes with other types of weapons, resulting in less fatal attacks (Pierce and Bowers, 1981).

In a study of mandatory sentence enhancements in six cities in three states, McDowall and colleagues found that such enhancements were effective in reducing the homicide rate, but did not appear to be effective in reducing the prevalence of other types of gun crimes (McDowall, Loftin, and Wiersema, 1992). These findings could possibly be explained by the level of precision used in compiling homicide data as opposed to robberies and assaults. As with the Bartley-Fox study, researchers concluded that such mandatory sentence enhancements influence some offenders to replace guns with other types of weapons, resulting in fewer fatal violent crimes.

Despite the positive impression such legislation has made on constituents, there is evidence that caution should be used by policy-makers when enacting directives related to mandatory sentencing. Punishment may not be definitive “because officials circumvent [mandatory sentences] if they believe the results are unduly harsh,” particularly with offenders who have little criminal history or mitigating circumstances surrounding the offense (Parent, et al., 1997). A National Institute of Justice review of mandatory sentencing found that arrest rates, indictments, and convictions decline for the types of crimes that would typically receive a mandatory sentence (Parent, et al., 1997). Data support that this is due to reactions by law enforcement, prosecutors, and judges who disagree with this approach to offender sanctions (Kleck, 1991; Kopel, 1994; Lizotte and Zatz, 1986; Loftin, et al., 1983; McDowall, et al., 1992; Parent, et al., 1997; Tonry, 1999a).

In his state-level analysis of sentencing policies and prison populations, Wooldredge (1996) found that “sentencing policies focused on ‘getting tough’ with felons may contribute to prison crowding by increasing the number of prison inmates serving more than one year, thereby slowing prison population turnover.” Joyce (1992) and Langan (1991) found similar results with policies that are designed to reduce judicial discretion, increase the number of felons sent to

prison, lengthen the duration of their incarceration, and limit parole board discretion. Such an increase in the prison population can lead to inequity in the treatment of inmates, inhibit the inmates' access to rehabilitative services, and increase the likelihood that inmates will engage in violence or become victims of violence (Wooldredge, 1996). Attention to other collateral effects of imprisonment on prisoners' later lives, their families, and the larger community may also make some criminal justice officials more reticent to comply with mandatory sentencing policies (Gainsborough and Mauer, 2000; Hagan and Dinovitzer, 1999; Petersilia and Tonry, 1999).

Perhaps the most comprehensive study of mandatory minimum sentencing laws was conducted in 1991 by the United States Sentencing Commission. This study was prompted by a Congressional mandate and examined such sentencing laws at the federal level. Their discovery that prosecutors are exercising discretion in the types of charges that are filed was consistent with other evaluations of mandatory minimums, resulting in the non-prosecution of some crimes that would be eligible for the more rigid sentences. Also consistent with other findings, the Sentencing Commission determined that in some instances judges were imposing prison terms that were less than what the mandatory minimums prescribed (U.S. Sentencing Commission, 1991).

More research is needed to determine how to best address the high number of firearm-related crimes in the U.S. Additionally, little research exists on the effectiveness of mandatory minimums as mitigators of the types of crimes they target or their collateral effects on other components of the criminal justice system. This evaluation is intended to contribute to this area of criminal justice research.

IV. Program Background

This section begins with an overview of Project Exile, the federal program implemented in Richmond to reduce firearm-related crime. A summary of the Virginia Exile program is then provided. Finally, because Virginia Exile was inspired by the federal program, there is a discussion of the differences between the two.

Federal Project Exile

Developed by the U.S. Attorney's Office for the Eastern District of Virginia, Project Exile was formally initiated in Richmond, VA in February 1997. The goal of Project Exile is to reduce firearm-related crime, specifically homicide, through the arrest and conviction of persons in illegal possession of a firearm. The program is designed as a partnership between the local law enforcement, prosecutors, and the federal courts, and combines the efforts of multiple federal, state, and local agencies to concentrate resources on its objective. Project Exile's multi-agency collaboration coordinates resources to expedite the arrest, prosecution and sentencing of qualified offenders (United States Department of Justice, 1998). After an arrest is made on an illegal possession of a firearm charge, the court is able to apply stringent bail rules in an effort to keep dangerous offenders incarcerated. If a conviction occurs, federal sentencing guidelines require a lengthy sentence in federal prison.

Under the federal Project Exile initiative, when an arrest is made that involves a firearm, the officer pages an ATF agent. They decide whether a federal statute applies to the situation and, if so, federal criminal charges are brought against the defendant. Then, using federal bail statutes that provide for a presumption of no bail, the burden is on the defendant to justify release. If the defendant is tried and found guilty of certain firearms violations, a mandatory prison term is given without the possibility of parole, ideally in a federal prison away from his / her community.

Generally, there are three types of firearm-related crimes that the federal Project Exile program targets (United States Department of Justice, 1998). They are:

- persons previously convicted of a felony who are in possession of a firearm,
- persons previously convicted of domestic violence who are in possession of a firearm, and
- persons in possession of both illicit drugs and a firearm.

The agencies involved in the coordination of Project Exile include the U.S. Attorney's Office for the Eastern District of Virginia; the Richmond Police Department and Richmond Commonwealth Attorney's Office; the Bureau of Alcohol, Tobacco and Firearms (BATF); the Federal Bureau of Investigation (FBI); the Virginia Attorney General's Office; and Virginia State Police. Training was provided to local and state law enforcement officers on issues related to federal firearm statutes and federal search and seizure procedures (United States Department of Justice, 1998).

Project Exile includes an intensive public outreach effort that uses television, radio, billboard, and bus advertising to get its message to the community. The program's motto, "An illegal gun will get you five years in a federal prison," is repeated throughout the promotion for added emphasis. Public service announcements are also used to encourage the community to report illegal firearms to law enforcement. Funding for this advertising blitz is raised through the Project Exile Citizen Support Foundation, a tax-exempt organization that promotes the program and works with various individuals, organizations, and businesses in the community who advise and support the program's advertising and outreach efforts.

Much media attention has been given to Project Exile's reported achievements. Although there has not been a formal evaluation of the program's effects, advocates suggest the program has had an impact in decreasing the rate of violent crime in the city of Richmond. Data available from 1990 - 1999 demonstrate that, beginning in 1997, the rate of violent crimes committed with a firearm in the city of Richmond dropped sharply through 1999 (Virginia Department of State Police, 1990 - 1999). Since this coincides with the start of Project Exile in Richmond, it implies that Project Exile may have contributed to this decrease. Furthermore, data compiled by the Richmond Police Department indicate that the number of guns seized from juveniles in Richmond fell by more than two-thirds from 1996 to 2000. The Police Department suggests that this too is also a result of Project Exile and its message.

Other initiatives implemented in the last few years could also influence the same factors that Project Exile seeks to impact, such as substantial increases in the number of federal drug prosecutions in the region, an initiative to reduce the backlog of fugitives wanted for violent offenses in the area, recent state sentencing reforms such as "truth in sentencing" and the

abolition of parole, and local public safety initiatives that were implemented during this same period of time (United States Department of Justice, 1998).

Based on reports of the program's alleged effectiveness, many other communities have modeled similar programs after Project Exile. These communities include Philadelphia, PA; Atlanta, GA; Milwaukee, WI; Rochester, NY; and Fort Worth, TX. Additionally, the federal government is in the process of considering a comprehensive national strategy based on Project Exile. This initiative, The Safe Streets and Neighborhood Act, will provide \$100 million in federal funds over five years to states that legislate mandatory minimum sentences for persons who use or carry firearms and are involved in violent crime or a serious drug offense.

Virginia Exile

The Virginia Exile Program, the subject of this evaluation, is a gun violence reduction initiative modeled closely after the federal Project Exile program. Legislation that strengthens penalties for certain firearm offenses was proposed by Governor Gilmore in October 1998, and passed by the 1999 General Assembly (DCJS, 1999). The new statutes became effective on July 1, 1999 and formed the foundation of the Virginia Exile program. The statutes assign a mandatory minimum sentence for offenders convicted of certain firearm violations and restrict bail for these offenders. For certain crimes, the new statutes substantially increase the amount of time served when compared with the previous sentencing recommendations outlined by the state sentencing guidelines. The statutes that provide the basis for the Virginia Exile program and the associated mandatory minimum sentences are listed in Table 1. Penalties that were in effect for the same offenses prior to July 1, 1999 are also listed.

<p align="center">Table 1 Virginia Exile program statutes</p>			
Virginia Code statute	Brief description of statute	Virginia Exile mandatory minimum sentence	Penalty prior to July 1, 1999
§ 18.2 - 308.1	Possession of firearm or weapon on school property	5 years	1 - 5 years
§ 18.2 - 308.2	Possession of firearm or concealed weapon by violent felon	5 years	1 - 5 years
	Possession of firearm or concealed weapon by non-violent felon	2 years	1 - 5 years
§ 18.2 - 308.4	Possession of firearm and possession of Schedule I or II drug	5 years	1 - 5 years
	Possession of firearm and distribution of Schedule I or II drug	5 years	3 years
	Possession of firearm and distribution of more than 1 pound of marijuana	5 years	3 years
§ 19.2 - 120	Bail should be denied (subject to rebuttal) for any person charged with a violation of § 18.2 - 308.1, § 18.2 - 308.2, or § 18.2 - 308.4 and which relates to a firearm and provides for a minimum, mandatory sentence.	N/A	N/A

*For the specific code language that constitutes each Virginia Exile charge, please see Appendix 1.

The Virginia Exile program was established to support the new laws by providing funds to aggressively prosecute these offenders. The goal of the program is to reduce firearm-related violence and remove illegal guns from the community (DCJS, 1999, 2000). Virginia Exile intends to accomplish this goal through two primary activities: (1) supporting prosecution and law enforcement to enable them to target violators of the firearm statutes, and (2) assisting localities in their public awareness efforts to inform citizens about the new laws. Additionally, the legislation creates a rebuttable presumption that the accused should be denied bail if charged with any of the targeted weapons violations. Guidelines for the Virginia Exile program further require the Commonwealth's Attorney to oppose any bail granted to a felon charged with these weapons violations.

In addition, the statewide Virginia Exile Foundation was established in June 2000 to generate community and monetary support for the program. This foundation has engaged in outreach through public service announcements and publications to promote the Virginia Exile program. However, no funds have been raised by the state foundation as of May 2001.

While their objectives are similar, Virginia Exile and the federal Project Exile programs differ in some respects. First, because firearms offenses targeted by Project Exile are prosecuted federally, convicted offenders serve their mandatory sentences in a federal prison that may be far away from their home, often in another state. The prosecution of Virginia Exile offenders, on the other hand, takes place on the state level. Once convicted, defendants are incarcerated in Virginia facilities. The potential for being "exiled" from one's community, therefore, may be somewhat less threatening within the state system.

Additionally, the two programs differ slightly in the types of firearms offenses they target. Project Exile provides that persons *in possession of a firearm who have previously been convicted of a domestic violence offense* are prosecuted under the Project Exile statutes. Virginia Exile has no provisions with regard to domestic violence offenses. Further, Virginia Exile includes *possession of a firearm or weapon on school property* as an offense that qualifies for prosecution under the stricter statutes. The federal statutes under Project Exile do not include such a provision. Despite these differences, however, the two programs are fundamentally alike.

V. Overview of the Virginia Exile Program Administration

In August 1999, twenty Virginia localities were invited to apply for Virginia Exile funds. Only those localities that met criteria set by the Governor's Office were qualified to apply. As stated in the 1999 Virginia Exile Program Guidelines (DCJS), "Factors taken into account in determining the eligible localities were the numbers of convictions in each locality for offenses specifically targeted by Virginia Exile, such as weapons possession or use, other related or designated offenses, and prior convictions of those arrested." Of the localities that met the criteria in the first year, six applied and were awarded funds. These localities are Chesapeake, Halifax County, Lynchburg, Petersburg, Richmond, and Roanoke. Their first year's funding cycle began on January 1, 2000.

In the second year of the program, the 14 localities that were qualified but did not apply for funds in the first year were again invited to apply for Virginia Exile funds. All six of the returning sites received continued funding and four new sites were added to the program. Continuation funding was recommended if reporting requirements were met, and if “project performance is satisfactory and funds are available” (DCJS, 1999, 2000). This evaluation will review only the six initial sites that began the program on January 1, 2000¹.

Grant Requirements

Localities are required to commit matching funds equal to 10% of their grant awards. In addition to the fiscal responsibilities required of Virginia Exile participants, the program guidelines document require that particular program participants are responsible for certain tasks. Briefly stated, guidelines require the Commonwealth Attorney’s Office to aggressively prosecute Virginia Exile cases, establish the necessary agreements and procedures for the program to function efficiently, provide instruction and training to staff and coordinate a public awareness campaign. Additionally, law enforcement should provide training to its personnel on procedures fundamental to the program’s operation and maintain necessary records to facilitate prosecution of Virginia Exile offenders. These tasks are outlined in greater detail in the Review of Local Program Implementation section on page 15.

Review of Awards

Localities applying for first year Virginia Exile program funds could request up to \$150,000 in total funds (to include \$135,000 in state funds and \$15,000 in local match). Localities that applied for continuing funds in the second year of the program were asked to request no more than the amount of funds they received in the first year.

A summary of state-funded Virginia Exile awards and expenditures is provided in Table 2. The table displays the amount of state funds awarded to each locality for each funding cycle, as well as the amount of first-year funds actually spent.

¹ Programs added in the second year (Chesterfield County, Henrico County, Portsmouth, and Suffolk) were excluded from this evaluation due to staggered start dates and limited case tracking data.

Table 2
Virginia Exile awards and expenditures 2000 - 2001 / State funds only

Locality	Grant period	State award	Expenditures	% of award spent
Chesapeake	Year 1	\$115,955	\$84,348	73%
	Year 2	\$115,955	--	--
Halifax County	Year 1	\$83,884	\$59,812	71%
	Year 2	\$83,884	--	--
Lynchburg	Year 1	\$99,460	\$96,937	97%
	Year 2	\$99,464	--	--
Petersburg	Year 1	\$95,188	\$52,701	55%
	Year 2	\$95,188	--	--
Richmond	Year 1	\$131,530	\$113,281	86%
	Year 2	\$131,264	--	--
Roanoke	Year 1	\$92,759	\$31,887	34%
	Year 2	\$72,191	--	--
Total	Year 1	\$618,776	\$438,966	71%
	Year 2	\$597,946	--	--

The following sections highlight the individual components of this evaluation. These include the methodology used to evaluate Virginia Exile, a review of local program implementation, and a report of the data collected by evaluators.

VI. Methodology

This evaluation of the Virginia Exile program incorporates qualitative and quantitative data from three primary sources:

- administrative documents such as program guidelines, grant applications, etc.;
- site visits and interviews of program staff; and
- case-specific and quarterly data received from the program sites.

Data collected for this evaluation concerned activities beginning on January 1, 2000 through May 2001. The sites included in this study are Chesapeake, Halifax County, Lynchburg, Petersburg, Richmond, and Roanoke. Each source of data and its contribution to this report is discussed in more detail below.

Administrative Document Review

To become more familiar with the program's elements and design, staff reviewed all available and relevant documentation on the Virginia Exile program. These documents included the program guidelines document which defines the intent of the program and outlines its required elements, grant applications submitted to DCJS by each participating locality, and award letters and agreements that were sent to each funded program site.

Site Visits and Interviews of Program Staff

Evaluators conducted two site visits to each of the six program sites. Initial site visit meetings were held in Spring 2000 with program staff. This group generally consisted of the Commonwealth's Attorney, a grant-funded prosecutor, support staff, and occasionally a law enforcement representative. At these meetings, evaluators asked staff about implementation of the program in their locality and received details about the legal process from arrest through conviction. Program staff also provided input and feedback on the final content and layout of the case tracking data collection form created for the evaluation (see Data Collection Forms, below).

Follow-up site visits were conducted a year later to assess implementation and everyday operation of the program in each locality. Program staff discussed general program-related topics, including the specific practices and procedures employed and the strengths and weaknesses of the program. The findings from these interviews are discussed in detail in the Review of Local Program Implementation (see Page 15).

Data Collection Forms²

Three data collection forms were created for the Virginia Exile program evaluation: a quarterly statistical form, a quarterly narrative form, and a case tracking form. The information collected with these forms provided data for the analyses presented in this report.

At program onset, Commonwealth's Attorneys were surveyed about the processing of felony weapons cases in their localities. This information, as well as information collected from document reviews and site visits, contributed to the design of a data collection form which tracks each Virginia Exile case from arrest through commitment. Program participants also reviewed the case tracking form, which was then revised and finalized by the evaluators. These case tracking forms were submitted to DCJS for each Virginia Exile case prosecuted. Information provided about each case includes defendant demographic information, bail information, types of firearms and drugs seized, charges brought against the defendant, charges for which the defendant was indicted or released, and sentencing information.

Quarterly statistical data and quarterly narrative data were also collected from each locality. The quarterly statistical report summarizes the number of cases, staff, and attorney hours spent on the Virginia Exile program each quarter. The narrative report explains how the program is operating in each locality with regard to activities, staffing, collaborative support, program obstacles and media campaign efforts during a given quarter.

² The data collection forms are not included in the report due to length, but are available upon request.

VII. Review of Local Program Implementation

As noted earlier, the Virginia Exile grant program makes funds available to concentrate prosecution efforts on firearms offenses using newly strengthened state laws and bail procedures. Funding is also allocated to organize community-based public awareness campaigns that focus attention on these new laws (DCJS, 1999, 2000). In this, the basic structure of the program varies little across the six localities outlined in this report.

Each locality receives grant funds that provide support for a prosecutor's salary. Each local program is led by a full-time prosecutor who may try all the Exile cases and, in some localities, handle all gun-related cases. Additionally, some localities requested and received funds for a paralegal or administrative assistant, and partial funding for a police department liaison. Monies to support advertising, public awareness, and related supplies were also requested.

The Virginia Exile program guidelines (DCJS, 1999, 2000) outline the program philosophy, participant eligibility and requirements. Program participants are required to be responsible for certain tasks. Specifically,

The Commonwealth's Attorney and Exile-funded prosecutor must:

- *Provide direct leadership of this project and establish necessary cooperative working partnerships and relationships with other necessary components of the criminal justice system.*
- *Provide vigorous, vertical prosecution of all weapons violations involving felons.*
- *Appear before the court to oppose bail for felons charged with weapons violations.*
- *Appeal adverse bail decisions to appropriate higher courts as provided in the new Virginia statutes on bail procedure.*
- *Establish a coordination committee of law enforcement, prosecution, and other agencies necessary to negotiate agreements and establish rules and procedures of operation.*

The Commonwealth's Attorney must:

- *Establish a training team to work in conjunction with the Commonwealth's Attorneys Services Council's Curriculum Committee and DCJS to develop and provide a multi-disciplinary training program to prosecutors, police, and community leaders.*
- *Include in the local training curriculum topics specific and relevant to the program.*
- *Develop or acquire training and resource materials for dissemination to all training program attendees to assure consistency of content and implementation.*

The Commonwealth's Attorney will be responsible for establishing a non-profit local foundation or similar entity to direct or facilitate an aggressive public outreach and information effort to:

- *Build community support for mandatory sentencing under both federal and state law.*
- *Develop a public awareness campaign employing effective utilization of local media resources.*
- *Warn potential violators of the certainty of severe sanctions if they are involved in weapons-related crimes.*

Additionally, the Commonwealth's Attorney is expected to coordinate enforcement efforts among local, state, and federal law enforcement agencies.

Law enforcement agencies must support the following components of the Virginia Exile program:

- *Train participating officers in referral of necessary information on all weapons seized in all drug-related and violent crime cases for immediate tracing to the Bureau of Alcohol, Tobacco, and Firearms.*
- *Train officers in relevant federal laws and rules and new state laws.*
- *Coordinate with other Commonwealth's Attorneys' offices and federal, state, and local law enforcement, prosecutorial, and judicial agencies.*
- *Enhance or create records systems to facilitate prosecution of Virginia Exile offenders, and provide base-line and on-going data as requested for the evaluation of Virginia Exile.*

To examine the operation of each local program regarding required tasks, evaluators studied information gathered through on-site interviews with the Exile prosecutor and other staff and reviewed quarterly progress reports submitted to DCJS. The section below describes the required components of the program as stated in the grant guidelines and how they are implemented in the six localities. A detailed listing of each locality's activities with respect to the program requirements is on page 17, Table 3. Following the discussion of the program requirements, the localities' experiences with the prosecutorial requirements of the program are discussed.

Program Requirements

This section addresses the primary program requirements for Virginia Exile. These include establishing a coordination committee, developing training curricula for local criminal justice officials, creating a non-profit foundation to support public outreach, and organizing a media campaign to enhance public awareness of Virginia Exile. Table 3 (on page 16 and 17) lists the specific components of the program requirements as employed by each locality.

Coordination Committee

The level of coordination that exists among local program staff is an important element of program operation. The grant guidelines require that each locality "*establish a coordination committee of law enforcement, prosecution, and other agencies necessary to negotiate agreements and establish rules and procedures of operation*" (DCJS, 1999, 2000). Local coordination committees were somewhat more necessary at program onset to ensure that operating procedures and lines of communication were established. For the four larger jurisdictions, formal arrangements were more common, presumably to keep track of heavier caseloads. The two smaller localities tended to have less formal coordination arrangements. All localities communicate with the U.S. Attorney's Office as needed.

Program-Related Training

The program guidelines also specify that each locality “*establish a training team to work in conjunction with the Commonwealth’s Attorneys Services Council’s Curriculum Committee and DCJS to provide a multi-disciplinary training program to prosecutors, police officers, and community leaders*” (DCJS, 1999, 2000). In three localities, Exile-related training is part of the police academy curriculum. Also, two localities provide in-house training focused on proper search and seizure techniques. Other training methods include meeting with law enforcement at roll calls and distributing training materials that document Exile procedures to law enforcement, magistrates, and judges. Finally, all local law enforcement officers are required to complete bi-annual in-service training in legal issues and procedures. At least one locality specifically noted that this bi-annual training is used to instruct officers on Exile procedures.

Non-profit Foundation

Another component of the grant requirements is the establishment of a local non-profit foundation “*to facilitate aggressive public outreach in order to build community support for mandatory sentencing under both federal and state law*” (DCJS, 1999, 2000). Most localities have had little success in developing a non-profit foundation due to a lack of time, resources, or difficulties in securing community commitment. As of May 2001, only two programs report having fulfilled this grant requirement. Two other localities have, however, devised procedures for establishing a foundation and plan to pursue this in the future.

The Media Campaign

Along with enforcement of the Exile statutes, the program stipulates that each locality must enact a public outreach effort via a local media campaign. Specifically, the program guidelines state that “*The Commonwealth’s Attorney should...develop a public awareness campaign employing effective utilization of local media resources...[and] warn potential violators of the certainty of severe sanctions if they are involved in weapons-related crimes*” (DCJS, 1999, 2000). Each locality currently uses various advertising resources to deliver the Virginia Exile message to the public. For most localities, these include advertisements on billboards and city buses. Three localities also use television advertisements and news coverage of the program. Additionally, some localities have contributed to public awareness about the program by conducting presentations in the local school systems. Most localities reported that public awareness of the Exile statutes is high, presumably as a result of these efforts.

The media campaign is also being used to expand the Exile message to neighboring localities. Advertising in Chesapeake covers the Greater Hampton Roads area, and television ads aired for the City of Richmond are viewed by an audience that extends to surrounding localities. Because Lynchburg and Roanoke share a media market, the Roanoke community has been exposed to Lynchburg’s television ads about the program.

Table 3
Specific components of program requirements as employed by each locality

Locality	Coordination Committee	Exile Training Team and training activities	Partnerships with federal prosecutors and law enforcement agencies	Non-profit foundation	Media campaign	Database enhancement
Chesapeake	<i>Members</i> <ul style="list-style-type: none"> • Exile prosecutor • Law enforcement liaison 	<i>Members</i> <ul style="list-style-type: none"> • Exile prosecutor • Law enforcement liaison <i>Activities</i> <ul style="list-style-type: none"> • Roll call training • Program guide reference documents distributed • Training conducted at police academy 	<ul style="list-style-type: none"> • Regular contact with the U.S. Attorney's Office • Law enforcement liaison for Exile is assigned to ATF 	<ul style="list-style-type: none"> • Greater Hampton Roads Project Exile Foundation 	<ul style="list-style-type: none"> • Billboards • Buses • Television ads • Presentations in school system 	<ul style="list-style-type: none"> • Running log on all Virginia Exile cases
Halifax	<ul style="list-style-type: none"> • No formal committee, but informal communication between the Exile prosecutor and law enforcement 	<ul style="list-style-type: none"> • No training team 	<ul style="list-style-type: none"> • No formal partnership, but communicates with the U.S. Attorney's Office as needed 	<ul style="list-style-type: none"> • None, but in the process of organization 	<ul style="list-style-type: none"> • Billboards • Essay contest in school system • Advertising partnership with local gun dealers 	<ul style="list-style-type: none"> • Running log on all Virginia Exile cases
Lynchburg	<i>Members</i> <ul style="list-style-type: none"> • Exile prosecutor • Law enforcement liaison 	<i>Members</i> <ul style="list-style-type: none"> • Exile prosecutor <i>Activities</i> <ul style="list-style-type: none"> • Program guide reference documents distributed 	<ul style="list-style-type: none"> • No formal partnership, but communicates with the U.S. Attorney's Office as needed 	<ul style="list-style-type: none"> • None, but in the process of organization 	<ul style="list-style-type: none"> • Billboards • Buses • Television ads • Press conferences 	<ul style="list-style-type: none"> • Incorporation of Virginia Exile data into the Virginia Commonwealth's Attorneys' Information System (VCAIS)

Locality	Coordination Committee	Exile Training Team and training activities	Partnerships with federal prosecutors and law enforcement agencies	Non-profit foundation	Media campaign	Database enhancement
Petersburg	<i>Members</i> <ul style="list-style-type: none"> • Exile prosecutor • Law enforcement liaison 	<i>Members</i> <ul style="list-style-type: none"> • Exile prosecutor • Law enforcement liaison <i>Activities</i> <ul style="list-style-type: none"> • Program guide reference documents distributed • Training conducted at police academy • Training on search and seizure and Exile procedures 	<ul style="list-style-type: none"> • No formal partnership, but communicates with the U.S. Attorney's Office as needed 	<ul style="list-style-type: none"> • None despite repeated efforts by Commonwealth's Attorney 	<ul style="list-style-type: none"> • Billboards • Buses • Presentations in school system • Participation in civic events 	<ul style="list-style-type: none"> • Separate database for all Virginia Exile cases
Richmond	<i>Members</i> <ul style="list-style-type: none"> • Exile prosecutor • Assistant U.S. Attorney • Paralegal / U.S. Attorney's Office • ATF representative • Law enforcement liaison 	<i>Members</i> <ul style="list-style-type: none"> • Exile Prosecutor • Firearms administrator <i>Activities</i> <ul style="list-style-type: none"> • Training conducted at police academy • Roll call training • Training on search and seizure and Exile procedures 	<ul style="list-style-type: none"> • Both U.S. Attorney's Office and ATF have representation in Richmond's coordination committee 	<ul style="list-style-type: none"> • Incorporated into Federal Project Exile Foundation 	<ul style="list-style-type: none"> • Billboards • Buses • Television ads for federal Project Exile 	<ul style="list-style-type: none"> • Separate database for all Virginia Exile cases
Roanoke	<ul style="list-style-type: none"> • None. Carried out by Exile prosecutor 	<i>Members</i> <ul style="list-style-type: none"> • Exile prosecutor <i>Activities</i> <ul style="list-style-type: none"> • Roll call training • Program guide reference documents distributed 	<ul style="list-style-type: none"> • Regular contact with the U.S. Attorney's Office • Law enforcement liaison for Exile is assigned to ATF 	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • Signs on taxicabs • Shares media market with Lynchburg 	<ul style="list-style-type: none"> • None specifically

The Process of Prosecution³

This section describes the court processes inherent in the prosecution of a Virginia Exile case, as generally described by Exile attorneys at the evaluation sites. Topics include the bringing of charges against a defendant, the statute that guides bail decisions, the transfer of cases to the U.S. Attorney's Office for federal prosecution, burden of proof and evidentiary issues, and the effect of mandatory minimums on prosecutorial and judicial discretion.

Charging and Bail Decisions

An Exile case begins when law enforcement makes an arrest and brings formal charges against a defendant. Coordinating the law enforcement and prosecutorial aspects of an Exile case requires that law enforcement officers bring accurate and provable charges against a suspect. To facilitate this, most localities have established a procedure where the Exile prosecutor is contacted by phone or pager when an arrest is made and an Exile charge is expected. This gives the prosecutor's office an opportunity to discuss the most appropriate charge with the arresting officers. In localities where such procedures were not effectively implemented, problems with charging decisions have been reported. If an offender is erroneously charged with an Exile offense, the charge often has to be ***nol prossed***⁴, dismissed, or reduced to a misdemeanor in ***General District Court***. For example, at the beginning of Petersburg's program, due to a high turnover rate, there were many new recruits in the Police Department. As a result, inexperienced or poorly trained officers reportedly used poor search and seizure techniques and often made inappropriate charging decisions regarding Exile. A procedural change in Petersburg now requires officers to contact the Exile liaison in the police department if they have a question about a charge. In turn, the Exile liaison will contact the Exile prosecutor with any further questions.

After a decision on the charge is reached, the case proceeds to ***First Appearance*** where the arresting officer will file formal charges with the magistrate. The magistrate will also make a decision of bail. One of the statutes governing the Exile program provides a rebuttable presumption of no bail for any offender charged with an Exile offense. Additionally, the grant guidelines state that the Exile prosecutor should "*appear before the court to oppose bail for felons charged with weapons violations*" (DCJS, 1999, 2000). According to Exile prosecutors and staff, the presumption of no bail and the requirement that prosecutors object to any adverse bail decisions pose two problems for localities at First Appearance. First, some magistrates fail to uphold the bail restrictions for Exile offenses in some localities. After communicating with the magistrates, some localities have observed improvement in magistrates' compliance with the no-bail presumption. However, others are still experiencing a problem. Finally, because the First Appearance can occur at any time of the day or night, the Exile prosecutor may not be present to oppose a decision of bail.

After the First Appearance, the case then moves to ***Advisement*** where the defendant is assigned counsel, if needed. Once counsel is retained or assigned, a bail hearing may occur before a judge. The ***Preliminary Hearing*** is the next step in the process which also occurs before a

³Please refer to Appendix 2 for an outline that describes the sequence of the prosecutorial events discussed in this section.

⁴ Terms appearing in bold italics are explained in the glossary in Appendix 3.

judge. Localities report that judges who have granted bail at Preliminary Hearing often set it at very high amounts. In such instances, the offender usually cannot afford bail and remains detained. Compared to other localities, Halifax County, Lynchburg, and Roanoke report the most problems with judges setting bail amounts that defendants can afford. Exile offenders in those localities may be able to make bail more easily. In Roanoke, the lack of compliance with the no-bail presumption has reportedly caused significant delays in the court process. Once defendants are released on bail, their defense attorneys often seek to delay their clients' court date for as long as possible. In at least one locality, it was reported that court supervision officers in pre-trial services are recommending that judges grant bail in Exile cases. Further, in response to Virginia Code §19.2-121 (see Appendix 1), which discusses fixing the terms of bail, judicial officers may be more inclined to grant bail for firearms offenses.

Additionally, the grant guidelines specify that *“the Commonwealth’s Attorney and Exile-funded prosecutor(s) must appeal adverse bail decisions to appropriate higher courts”* (DCJS, 1999, 2000). All localities report that they would appeal a bail decision to a higher court if they disagreed with the decision of the lower court judge. Some localities have said, however, that judges in higher courts are often unlikely to reverse the bail decision of a lower court. At this time, most localities report that they have not appealed a bail decision to a higher court.

Transfers to the Federal System

Exile charges that are certified at the General District Court go through a **Grand Jury** for **indictment**. All localities also report using **direct indictments** for Exile charges, either for the purpose of imposing additional charges on a defendant if further evidence becomes available after the Preliminary Hearing or because the Exile prosecutor does not agree with the decision of the General District Court. If indicted, charges will proceed to **Circuit Court** for prosecution. However, some Virginia Exile cases not tried in Circuit Court are instead transferred to the U.S. Attorney’s office. Such cases tend to involve a considerable amount of drugs or have slight evidence of constructive possession⁵ of drugs or firearms.

When making the decision to transfer cases for federal prosecution, localities consider the potential for more rigid sentencing in federal court. In Richmond, the decision to transfer cases to the federal level is a function of the coordination committee. Due to the existence of federal Project Exile and the relationships that have been fostered with the U.S. Attorney’s Office, prosecutors in Richmond transfer more cases to federal court than any other locality participating in the program. Chesapeake has also transferred several cases to the federal system. Other localities have done so very infrequently or not at all.

Transfers to federal court usually occur via nol pros decisions in local General District Courts. Once a charge is nol prossed, the case is pursued by the U.S. Attorney’s Office. As characterized by local Exile staff, cases that are transferred for federal prosecution are often “clean” cases for which a conviction should be relatively easy to obtain. For this reason, a comparison of conviction rates between state-prosecuted and federally-prosecuted firearms cases is generally not appropriate.

⁵ Constructive possession refers to the act of proving possession (as in a firearm or narcotic) if it was not actually recovered on the defendant.

Evidentiary Issues

Evidence supporting the prosecution of an Exile charge is critical at the Circuit Court level. Localities cited several problems associated with this aspect of an Exile case. All localities reported difficulties proving constructive possession of firearms or drugs. Evidence of a gun's operability was also a hindrance in a few cases. Virginia Court of Appeals cases such as Jones v. Commonwealth (1993), Gregory v. Commonwealth (1998), and Williams v. Commonwealth (2000) established that if a gun is not proved to be operable it cannot be admitted as evidence for certain charges. In an effort to respond to this problem, Exile prosecutors have encouraged law enforcement officers to test-fire guns to determine operability, or have depended upon firearms experts to testify regarding the operability of firearms. As a result, this obstacle to prosecution has been minimized. In addition, this problem may be significantly alleviated by a recent Virginia Court of Appeals decision, Armstrong v. Commonwealth (July 31, 2001) which established that firearms admitted as evidence do not have to be proven operable.

Another obstacle to the prosecution of Exile offenders has been the difficulty of obtaining certified copies of felony convictions. Virginia Code § 8.01-389 states that *"the records of any judicial proceeding and any other official records of any court of this Commonwealth shall be received as prima facie evidence provided that such records are authenticated and certified by the clerk of the court where preserved to be a true record."* Further, Owens v. Commonwealth (1990), a Virginia appellate court decision, confirmed that certified copies must be admitted as evidence to establish a prior felony history because "the concern for reliability is largely obviated because the nature and source of the evidence enhance the prospect of its trustworthiness." These restrictions have greatly reduced the utility of using out-of-state records to prove prior felonies. Specific problems reported for obtaining out-of-state records include another state's failure to send a certified copy of the felony conviction, the monetary costs for acquisition, and ambiguous record keeping by other states. Some localities have reported difficulty in obtaining Virginia felony records as well because some older felony records have been expunged from the Virginia Criminal Information Network (VCIN), the database in which such records are maintained.

In addition, some localities have experienced difficulty with the admissibility of juvenile records for Exile offenders. This stems partially from the Baker v. Commonwealth (1998) Virginia Court of Appeals decision which provided that both parents must be informed when a juvenile is found to be delinquent by a court. Prior juvenile felony convictions are not admissible unless both parents were notified. Petersburg has also had difficulty proving juvenile convictions due to resistance by some Juvenile Courts and Court Service Units to provide information on a juvenile's prior history.

Petersburg reported additional problems prosecuting those Exile offenses that rely on a prior felony conviction. To prove a prior felony conviction, a sentencing order must be documented as established by Webb v. Commonwealth (2000). If an individual was convicted of a felony and then committed a gun crime before being sentenced on the prior felony conviction, this person could not be charged under the convicted felon statutes of Exile. Petersburg has addressed this issue by asking for a continuance or later trial date, thus waiting until the sentencing order has come through before further pursuing prosecution of the charge.

Mandatory Sentencing

The reactions of criminal justice professionals to mandatory minimum sentencing are an important element in understanding the operation of the program in each locality. Reactions by law enforcement and judges to the mandatory sentencing requirements of the Exile statutes, as viewed by Exile prosecutors, may be particularly useful to consider. In the early phases of the program, some localities suggested that law enforcement exercised discretion in their decisions to bring Exile charges against an offender. This reportedly occurred because some officers felt that the mandatory sentencing requirements were too rigid. Further, all localities reported that many judges had mixed reactions to the mandatory sentencing provisions. Because judges typically impose a sentence upon conviction in Circuit Court, Exile staff believe that there is concern among judges that their discretion in sentencing is restricted by the mandatory penalties associated with Exile. These requirements are thought to compromise judges' consideration of the circumstances that can surround a charge.

Exile staff also report that judges may be using a number of strategies to circumvent the mandatory sentencing requirements when they are deemed inappropriate. For example, some judges may find the mandatory sentence to be too harsh for cases involving the simultaneous possession of a firearm and drug residue (such as in the stem of a crack pipe). Their concern is that the Exile legislation is not truly intended to address such cases. In such instances, judges have reportedly eluded the mandatory sentencing requirements by vacating the firearm charge and imposing a longer sentence than usual for the drug possession. Additionally, in some localities, judges are reportedly comparing the time to be served under the Exile statutes with penalties previously prescribed by the sentencing guidelines for firearms offenses. In these instances, concern was expressed that judges may be avoiding the mandatory minimum sentence by deferring to the lesser penalties that were in effect prior to July 1, 1999. Concurrently, some localities have reported that judges believe there is too much disparity between the prior sentencing guidelines and the mandatory sentences.

Finally, Exile prosecutors suggest that juries may be somewhat skeptical of mandatory sentencing and, therefore, sympathetic toward the defendant with regard to sentencing decisions. If so, prosecutors suggest that localities with strong community awareness of the Exile program, or whose court officials allow discussion of the mandatory penalties associated with the case at the pre-trial jury interview, may expect their Virginia Exile conviction rates to be lower. Specifically, juries may attempt to avoid the mandatory sentence by not convicting the defendant. Commonwealth's Attorneys also suggest that low conviction rates by juries may also be the result of a general distrust of law enforcement in some communities. Presently, however, there have been very few jury trials across all localities.

This review of the court processes involved in the implementation of the Virginia Exile program was based on information obtained from site visit interviews conducted with Exile program staff in each participating locality. The following section of this report explains the same court processes by focusing on the case-specific data collected in each of the program sites. This review provides a more in-depth perspective on each locality's experience with the Virginia Exile Program.

VIII. Review of Virginia Exile Program Data

The Virginia Exile program provides supplemental resources to improve prosecution of newly strengthened state laws for certain firearm-related offenses. To examine the effectiveness of this effort, elements of the legal process for these cases were reviewed. Case-specific data on all Virginia Exile cases were collected expressly for this purpose, and are discussed below.

Basic Case Information

The Virginia Exile program formally began on January 1, 2000 when grant funds were released to all participating localities. While some programs were able to accomplish program start-up immediately, others did not get their programs underway until March or April 2000. Table 4 below displays the number of Virginia Exile cases prosecuted since program onset through May 2001. As expected, the more densely populated jurisdictions have prosecuted a greater number of Virginia Exile cases, with Richmond having the highest number of cases by far.

A total of 310 cases have been prosecuted across all sites, representing a total of 356 Exile charges. Additional (non-Exile) charges brought against the defendants included 330 felony and 138 misdemeanor charges. The average number of charges for each Virginia Exile case was 2.7. Grant funds provided for a monthly average of 113 attorney hours and 55 support staff hours per locality to prosecute Virginia Exile cases.

Table 4 Number of Virginia Exile cases prosecuted, by locality (January 1, 2000 – May 15, 2001)		
Locality	Number of cases	Percentage of total cases
Chesapeake	49	16%
Halifax County	29	9%
Lynchburg	26	8%
Petersburg	44	14%
Richmond	132	43%
Roanoke	30	10%
Total	310	100%

Virginia Exile cases may also be transferred to the U.S. Attorney's Office for prosecution when it is deemed most appropriate to do so. The U.S. Attorney's Office for the Eastern District of Virginia was involved in the creation of the federal Project Exile program, on which the Virginia Exile program is modeled, and has taken a special interest in assisting with the prosecution of these cases as needed. The types of cases most often transferred for federal prosecution involve

large quantities of drugs. Reportedly, federal statutes allow for stricter sentencing than Virginia statutes in these cases.

Table 5 displays the number of Virginia Exile cases that have been transferred to the U.S. Attorney's Office for prosecution. Richmond, which has worked closely with its regional U.S. Attorney's Office since the start of the federal Project Exile program in 1997, transferred more than half of their Virginia Exile cases. At the opposite extreme, Halifax County and Lynchburg transferred none. Overall, 28% of all Virginia Exile cases were transferred for federal prosecution.

Table 5 Number of Virginia Exile cases transferred to the U.S. Attorney's Office			
Locality	Number of cases	Number of cases transferred	Percentage of cases transferred
Chesapeake	49	8	16%
Halifax County	29	0	-
Lynchburg	26	0	-
Petersburg	44	1	2%
Richmond	127	78	61%
Roanoke	30	1	3%
<i>Missing</i>	5	0	-
Total	310	88	28%

After excluding cases that were transferred to the U.S. Attorney's Office, the remaining sample consisted of 222 cases that were tried in Virginia courts. Case-specific data were collected for these 222 cases, and the remainder of this section reviews only this sample.

Given that the focus of the Virginia Exile program is to reduce firearm-related violence, data were collected about the numbers and types of firearms seized in these cases. Of the 222 Virginia Exile cases, 162 provided information about the seizure of firearms. Of these, 81% (132 cases) reported the seizure of some sort of firearm, resulting in a total of 168 firearms confiscated. Handguns represented over 60% of all firearms seized. The types of firearms seized are listed in Table 6.

<p>Table 6 Types of firearms seized in Virginia Exile cases</p>		
Type of firearm seized	Number of firearms seized	Percentage of all firearms seized
Handgun	103	61%
Shotgun	33	20%
Rifle	18	11%
Unknown type	12	7%
Air gun (bb, pellet, etc.)	2	1%
Total	168	100%

The Virginia Exile statutes also notably focus on offenses that involve the possession or distribution of a controlled substance, specifically: *(1) possession of schedule I or II drugs while in possession of a firearm; (2) distribution of schedule I or II drugs while in possession of a firearm; and (3) distribution of more than one pound of marijuana while in possession of a firearm.* Data were collected on the types of drugs seized in Virginia Exile cases. Of the 222 cases in the sample, drug seizure data were available for 162 cases. Of these, 55 cases involved the confiscation of controlled substances. In Table 7, the types of drugs and frequency with which they were seized are shown. Cocaine was confiscated in 71% of all cases in which drugs were seized.

<p>Table 7 Percentage of Virginia Exile cases in which drugs were seized, by type</p>		
Type of Drug Seized	Number of Cases in Which Drugs Were Seized	Percentage of Cases in Which Drugs Were Seized
Cocaine / cocaine derivative	39	71%
Marijuana	28	51%
Heroin	6	11%
Pharmaceutical	2	4%
LSD	1	2%
Methamphetamine	1	2%

In addition, demographic information about the Exile defendants was collected. Defendants were overwhelmingly male (95%), generally between the ages of 18 – 44 (86%), and most were African-American (74%). There were three defendants over the age of 64, and two under the age of 18. Caucasians accounted for about 23% of all persons charged with a Virginia Exile offense. Asian-Americans and Hispanics represented less than 3% combined.

Bail Information

Besides the statutory emphasis on firearm offenses, another statute highlighted by the Virginia Exile program provides for a rebuttable presumption of no bail for offenders charged under an Exile statute. The statute § 19.2-120 (See Appendix 1) specifies, that in regard to the admission of bail, *“The judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if the person is currently charged with: ... A violation of § 18.2-308.1, § 18.2-308.2, or § 18.2-308.4 and which relates to a firearm and provides for a minimum, mandatory sentence.”* Essentially, this statute states that offenders charged with any Exile offense are not to be granted bail unless they can provide the court with a reasonable argument to the contrary.

Despite the statute, bail was frequently granted in the observed cases. In Table 8, the number of cases in which bail was granted at some point in the process is displayed by locality. Overall, in 35% of all cases, bail was granted to an Exile defendant. Roanoke and Lynchburg⁶ show the highest rates of bail being granted, followed closely by Petersburg and Halifax County. Richmond and Chesapeake show a significantly lower rate of bail than the other four localities.

The fact that a defendant is granted bail by a judge or magistrate does not necessarily mean that he / she was able to meet the bail requirement. If the bail amount is not met, the defendant remains incarcerated. While specific data for that circumstance were not examined for this report, several Exile prosecutors noted that some judges set very high bail amounts for Exile cases.

Table 8 Number of Virginia Exile cases where bail was granted to a defendant, by locality			
Locality	Number of cases	Number of cases where bail was granted	Percentage of cases where bail was granted
Chesapeake	41	6	15%
Halifax County	29	12	41%
Lynchburg	26	15	58%
Petersburg	43	19	44%
Richmond	53	8	15%
Roanoke	29	18	62%
<i>Missing</i>	<i>1</i>	-	-
Total	222	78	35%

The granting of bail was also examined by the type of Virginia Exile charge. These data are displayed in Table 9. The difference in the rate of bail granted among the Virginia Exile charges

⁶ Lynchburg reported that recommendations for bail were independently provided to judges by pre-trial services court supervision officers and that this may have contributed to the high rate of bail being granted.

is small. Among the three offenses that are charged most frequently, *possession of schedule I or II drugs while in possession of a firearm*, *non-violent felon in possession of a firearm*, and *violent felon in possession of a firearm*, the percentage of cases in which bail was granted varied by only 6%. Interestingly, of these three charges, the one that had the highest rate of bail granted was the *violent felon in possession of a firearm* charge.

Table 9 Number of Virginia Exile cases where bail was granted to a defendant, by charge			
Type of Virginia Exile charge*	Number of cases	# of cases where bail was granted	% of cases where bail was granted
Firearm + Possession of schedule I or II drugs	44	16	36%
Firearm + Distribution of 1 pound + of marijuana	2	1	50%
Firearm + Distribution of schedule I or II drugs	0	0	-
Firearm + Non-violent felon	110	40	36%
Firearm + Violent felon	38	16	42%
Firearm + While on school property	1	1	100%
<i>Cases with multiple Virginia Exile charges</i>	26	4	15%
<i>Missing</i>	1	-	-
Total	222	78	35%

*For the specific code language that constitutes each Virginia Exile charge, please see Appendix 1.

Bail can be granted at any stage of the court process between First Appearance and Circuit Court. In most instances, a magistrate hears the charges and makes a determination of bail at First Appearance. Any other determination of bail made after First Appearance is ordinarily the jurisdiction of a judge. The rate of bail being granted was also examined to determine if either magistrates or judges were granting bail more frequently than the other. This was examined by comparing the rates of bail being granted at First Appearance with the rates of bail being granted subsequent to First Appearance. By examining the 78 cases in which bail was granted, the data suggest that judges have a slightly higher rate (54%) of granting bail to Virginia Exile defendants than the magistrates (46%) across the six localities.

The program guidelines also require that Commonwealth's Attorneys oppose a decision to grant bail. Data indicated that, across all sites, prosecutors objected to bail being granted in 8% of the cases. In our discussions with the prosecutors, we were advised that it is often not possible to oppose bail at First Appearance since this may take place at any time of the day or night. Additionally, opposing bail decisions was often perceived as futile since it is unusual for a judge to reverse his / her decision or to overturn the decision of a lower court or magistrate.

Basic demographics of the Virginia Exile defendants who were granted bail were also considered when examining the rate of bail. The probability of being granted bail generally increased as the age of the defendant increased (see Table 10).

Table 10 Number of Virginia Exile defendants granted bail, by age group			
Age group	# of defendants	# of defendants granted bail	% of age group granted bail
Under 18	2	1	50%
18 – 24	84	21	25%
25 – 44	101	42	42%
45 +	31	13	42%
<i>Missing</i>	4	1	-
Total	222	78	35%

The race or ethnicity of a defendant was another notable factor in predicting the likelihood of bail being granted (see Table 11). Data indicate that, across all sites, Caucasians are twice as likely as African-Americans to be granted bail. The numbers of Asian-Americans and Hispanics charged with a Virginia Exile offense were too small to conduct similar comparisons for these groups.

Table 11 Race / Ethnicity of Virginia Exile defendants who were granted bail			
Type of race / ethnicity	Number of defendants	Number of defendants granted bail	Percentage of defendants granted bail
African-American	164	47	29%
Asian-American	4	1	25%
Caucasian	51	30	59%
Hispanic	3	0	-
Total	222	78	35%

The issue of race relative to bail was further examined by locality and type of charge. It appears from the data that the particular charge had little influence on the bail decision. Likewise, all six localities showed similar rates of bail by race. However, other factors that may have influenced the decision to grant bail to a defendant, such as prior criminal record or employment status, were not available for examination for this report.

Court Process Information

Case-specific data were collected for all Virginia Exile cases and included information about all charges brought against an Exile defendant. All cases included in this evaluation were required to have at least one Virginia Exile charge; however, some cases had multiple Virginia Exile charges and some also involved additional (non-Exile) charges. Case-specific data included information about the court proceedings for specific charges brought against a defendant. Beginning with the preliminary hearing in General District Court, information was gathered about which charges were certified to the Grand Jury or disposed in lower court. Charges were tracked through indictment to Circuit Court by the Grand Jury, and the defendant's plea to each charge was noted. The finding on each charge by a judge or jury was collected, as well as sentencing information for each charge.

Charges

The 222 Virginia Exile cases included in this review represent 249 Exile charges. This section describes the numbers and types of charges brought against defendants in the cases. Data collection forms for some cases did not include complete court process data for all charges, therefore missing information has been noted for certain analyses.

Three Virginia Exile charges were brought against defendants far more frequently than others: *possession of schedule I or II drugs while in possession of a firearm*, *non-violent felon in possession of a firearm*, and *violent felon in possession of a firearm*. These three charges represented 96% of all Virginia Exile charges brought to the state courts. Of these charges, *non-violent felon in possession of a firearm* was the most frequently charged. In Table 12, the number of Virginia Exile charges brought in General District Court by type and locality are displayed.

Table 12 Number of Virginia Exile charges, by type and locality							
Type of Virginia Exile charge*	Chesapeake	Halifax County	Lynchburg	Petersburg	Richmond	Roanoke	Total charges
Firearm + Possession of schedule I or II drugs	15	1	5	13	24	7	65
Firearm + Distribution of 1 pound + of marijuana	2	0	1	2	0	0	5
Firearm + Distribution of schedule I or II drugs	0	0	0	3	0	0	3
Firearm + Non-violent felon	25	21	13	21	30	20	130
Firearm + Violent felon	2	7	8	13	9	5	44
Firearm + While on school property	0	0	0	2	0	0	2
Total	44	29	27	54	63	32	249

*For the specific code language that constitutes each Virginia Exile charge, please see Appendix 1.

Charges that are certified at the preliminary hearing are brought before a Grand Jury, and the Grand Jury makes the decision whether or not to indict each charge to Circuit Court. Sometimes, however, charges are directly indicted to the Grand Jury without a preliminary hearing. This may occur when new evidence becomes available allowing for additional charges to be brought against the defendant after the preliminary hearing has concluded.

Indictments

Table 13 displays indictment decisions for all 249 Virginia Exile charges initially brought before the General District Courts. Unfortunately, indictment data were missing for many cases. However, available data indicate that approximately 66% of Virginia Exile charges were indicted.

Table 13 Indictment status of Virginia Exile charges		
Charge status	Number of charges	Percentage of charges
Indicted	116	66%
Not indicted	61	34%
Status unknown	72	--
Total	249	100%

NOTE: Percentage figures exclude charges with an unknown status, to best reflect the findings for the actual valid sample.

Of the 116 charges indicted, more than half were charges of *non-violent felon in possession of a firearm* (see Table 14). In addition, a plea is entered for each charge that is indicted. Defendants pled not guilty to 60% of indicted Virginia Exile charges.

Table 14 Number of Virginia Exile charges that resulted in an indictment		
Type of Virginia Exile Charge*	Number of charges indicted	Percentage of indicted charges
Firearm + Possession of schedule I or II drugs	33	28%
Firearm + Distribution of 1 pound + of marijuana	3	3%
Firearm + Distribution of schedule I or II drugs	0	-
Firearm + Non-violent felon	63	54%
Firearm + Violent felon	16	14%
Firearm + While on school property	1	1%
Total	116	100%

*For the specific code language that constitutes each Virginia Exile charge, please see Appendix 1.

Conviction and Sentencing

Disposition data show that over half (55%) of the 116 charges indicted were subsequently convicted as charged, and about 22% resulted in the charge being nol prossed (see Table 15). A disposition of nol pros means that, should further evidence become available, the charge could be brought against the defendant again without violating the double jeopardy clause of the Constitution.

Disposition data also show that, of the charges indicted, 29 resulted in a plea agreement in Circuit Court. Of those charges, the majority (41%) concluded in a conviction of a lesser charge. About 28% resulted in the charge being nol prossed.

Table 15
Disposition of Virginia Exile charges that were indicted to Circuit Court

Type of Virginia Exile charge*	Dispositions					
	Convicted as charged	Nol prossed	Convicted of lesser charge	Dismissed/acquitted	Other	Total
Firearm + Possession of schedule I or II drugs	13	12	2	5	1	33
Firearm + Distribution of 1 pound + of marijuana	1	1	1	0	0	3
Firearm + Distribution of schedule I or II drugs	0	0	0	0	0	0
Firearm + Non-violent felon	39	11	6	5	2	63
Firearm + Violent felon	11	1	2	2	0	16
Firearm + While on school property	0	0	1	0	0	1
Total	64**	25	12	12	3	116
Percentage of total dispositions	55%	22%	10%	10%	3%	100%

*For the specific code language that constitutes each Virginia Exile charge, please see Appendix 1.

**One Exile charge was not indicted because indictment by the Grand Jury was waived, but was eventually convicted as charged.

Of the Virginia Exile charges that were indicted, overall, 55% resulted in a conviction as charged. The charge of *violent felon in possession of a firearm* had the highest rate of conviction (69%), followed by *non-violent felon in possession of a firearm* which had 62%. *Possession of schedule I or II drugs while in possession of a firearm* had only a 39% conviction rate.

Finally, those Virginia Exile charges that resulted in a conviction were studied to determine whether the full mandatory minimum sentence was applied. These data are displayed in Table 16. Of the 65 Virginia Exile charges that resulted in a conviction, 95% were given the full mandatory minimum sentence for that charge.

Table 16 Amount of time each Virginia Exile conviction was sentenced to serve				
Type of Virginia Exile charge*	Months sentenced to serve			
	0 - 23	24 – 59	60+	Total
Firearm + Possession of schedule I or II drugs	1	0	12	13
Firearm + Distribution of 1 pound + of marijuana	0	0	1	1
Firearm + Distribution of schedule I or II drugs	0	0	0	0
Firearm + Non-violent felon	2	35	3	40
Firearm + Violent felon	0	0	11	11
Firearm + While on school property	0	0	0	0
Total	3	35	27	65

*For the specific code language that constitutes each Virginia Exile charge, please see Appendix 1.

NOTE: Shaded area highlights those convictions that received the mandatory minimum sentence for the Exile charge.

Sentencing data were also examined to determine whether sentences were being applied consecutively as required by the statutes. There were 31 cases that involved an Exile conviction and at least one additional charge that incurred a conviction. In 9 (29%) of those cases, additional convictions resulted in actual time to be served consecutively. However, 22 (71%) cases documented a suspended sentence (i.e., no time served) on an additional conviction. Therefore, it may be possible that the consecutive sentencing requirement is circumvented through the suspension of sentences on additional convictions.

Additional (non-Exile) Charges

There were also charges brought against the defendants that were not Virginia Exile charges. In cases where data on additional charges were available, 212 additional felony charges of varying types were noted (see Table 17). The most frequently cited involved illicit drugs (35% of total other felony charges). Closely following were crimes against the person, such as assault, robbery, kidnapping, and rape, which are also considered violent crimes (29%). Of the 212 additional charges, 125 (59%) resulted in an indictment.

Table 17 Types of additional (non-Exile) charges filed in Virginia Exile cases			
Type of charge	Frequency of additional felony charges	Number of additional charges indicted	Percentage of additional charges indicted
Drug-related	74	51	69%
Crime against the person	62	35	56%
Property crime	29	23	79%
Weapon-related	26	9	35%
Vehicular-related	7	4	57%
Other	7	-	-
DUI	4	1	25%
Fraud	3	2	67%
Total	212	125	59%

Similar to Virginia Exile charges, the majority of pleas entered for additional charges were not guilty (55%). Dispositions were the result of a plea agreement for 42 of these additional felony charges. Evidentiary issues and problems with witnesses reportedly contributed to dispositions that were convicted on lesser charges or charges that were nol prossed.

IX. Summary Assessment by Virginia Exile Staff

In addition to collecting data, site interviews with program staff attempted to gauge their overall impressions of the Exile program. In general, localities' perceptions of the program were positive. Petersburg and Richmond both reported that public awareness is very high in their localities, that law enforcement is rewarded by observing the incarceration of repeat offenders, and that anecdotal evidence suggests a deterrent effect on would-be gun criminals. For example, Richmond points to an increase in the number of abandoned or "found" guns recorded by their Firearms Administrator as an indication that the program is having some deterrent effect on potential firearms offenders. In Halifax, Exile staff reported that offenders are carrying firearms on their person less often. Lynchburg prosecutors have reported a high level of community awareness about the program and have indicated that the certainty of punishment for firearms offenders imparts a greater sense of confidence in the criminal justice system to the public. While Exile staff in Roanoke have noted that public awareness of the Exile statutes is low in that locality, they have observed a positive effect of the program in that weapons-related crimes are being taken more seriously and are now receiving substantial punishment. Exile staff in Chesapeake report seeing a monthly increase in the number of Exile cases brought to court, which should presumably lead to increases in the number of firearms offenders incapacitated.

However, localities also reported some problems with the program. As mentioned in this report, these difficulties include impediments to establishing non-profit foundations, frequency of bail being granted by some magistrates and judges, difficulties obtaining certified felony records, problems with charging decisions made by law enforcement officers, and possible circumvention of the mandatory penalty requirement. It was also suggested that further consideration of the real world practicality of the Virginia Exile statutes during the development stage may have minimized some of these difficulties. Specifically, it was reported that some prosecutors and law enforcement officers are exercising discretion in the types of offenses they prosecute or charge under Exile because they may feel that the mandatory penalty is inappropriate given the particular context of a crime. For instance, judges were generally described as resistant to a 5-year mandatory sentence in drug residue cases because such a sentence was viewed as unsuited for the crime. Additionally, some Exile staff suggested that individuals were perhaps being unfairly prosecuted under Exile based on very old prior felony convictions.

X. Conclusions

The Virginia Exile grant program had its official start in January 2000, providing grant-funds to supplement prosecution of three Virginia Code statutes that became effective July 1, 1999. These statutes were designed to apply mandatory minimum sentences to convictions of particular firearm offenses, thereby increasing the penalties applied to such offenses prior to July 1, 1999. The program's stated purpose is to reduce gun-related violence in the participating localities (DCJS, 1999, 2000) by taking custody of and convicting persons who violate these firearm-related statutes.

The Department of Criminal Justice Services, Evaluation Unit received a request from the Secretary of Public Safety to conduct an evaluation of the Virginia Exile program. The evaluation was designed to assess both the program implementation and outcomes. Data collection included a review of quarterly grant reports, analysis of case-specific data, as well as site visits and interviews with Exile program staff. An examination of the data reveals the following primary findings:

Achievements

- The Virginia Exile program was established to support recently strengthened laws that target certain types of firearm offenses. This support is provided in two ways: financial assistance to prosecutors and law enforcement to enable them to target violators of the firearm statutes; and assisting localities in their public awareness efforts to inform citizens about the new laws. In the program's first year, six Virginia localities were awarded funds. Four additional localities were added to the program in the second year.
- From January 2000 through May 2001, there were 310 cases in which Virginia Exile charges were brought against a defendant. Virginia Exile defendants were more likely to be male (95%), between the ages of 18 – 44 (85%), and African-American (74%). Of the 310 cases, 88 (28%) were transferred to the U.S. Attorney's Office for federal prosecution.

- Of those charges that were eventually indicted to a Virginia Circuit Court, 65 (56%) resulted in a Virginia Exile conviction. Of those 65 Exile convictions, 62 (95%) received the mandatory minimum sentence.
- Firearm and drug seizure data were available for 162 Exile cases. These data indicate that 132 (81%) cases involved the seizure of at least one firearm, most of which were handguns (61%). In addition, 55 (34%) cases involved the confiscation of controlled substances. Cocaine was the type most frequently cited, and was seized in 71% of these cases.
- Prosecutors and staff reported generally favorable impressions of the program. Most felt that the program, at minimum, provides additional tools to get the “bad guys” off the street. It was also reported that court officials may be taking all weapons offenses more seriously as a by-product of the emphasis on firearms offenses. In addition, anecdotal reports suggested that fewer criminals may be carrying guns.

Challenges

- Questions regarding the functionality of the Virginia Exile statutes were raised, suggesting that the real world application of the statutes is not as straightforward as it may appear at face value. Specifically cited were issues with the statutory presumption of no bail for offenders with these charges, and the programmatic requirement that prosecutors object to adverse bail decisions.
- Establishing Exile foundations and media campaigns in each locality had mixed success. Some seemed to put substantial energy into the development of a non-profit foundation to help with fund-raising, while others put more effort into their community awareness campaign. Certain localities also reported that they were having a difficult time establishing foundations with limited resources in their area already committed to other endeavors. Because intended effects of the program are somewhat contingent on the foundation/media campaign component, these difficulties are noteworthy.
- Despite the statutory presumption of no bail for offenders charged with a Virginia Exile offense, findings indicate about 35% of all Virginia Exile defendants are granted bail. This suggests that either magistrates and judges are not fully aware of the statute’s provisions, or are granting bail due to perceived conflicts with other Virginia Code requirements. In addition, when a defendant is granted bail, case-specific data indicated that prosecutors do not often oppose the decision as required in the program guidelines. Data showed that prosecutors objected to bail being granted only 8% of the time.
- Of the six Virginia Exile offenses, only three are being charged with any frequency (*possession of schedule I or II drugs while in possession of a firearm, non-violent felon in possession of a firearm, and violent felon in possession of a firearm*). These three charges represent 96% of all Virginia Exile charges brought. The other three offenses (*distribution of schedule I or II drug while in possession of a firearm, distribution of*

more than one pound of marijuana while in possession of a firearm, and possession of a firearm while on school property) were rarely charged (4%).

- While the Exile statutes mandate that sentences on multiple convictions be served consecutively, nearly three-quarters of applicable cases included at least one suspended sentence. It may be possible that the consecutive sentencing requirement is circumvented through the suspension of sentences on additional convictions.
- One factor that could affect the program's deterrent effect is the lack of certainty of a punishment. By the program's philosophy, the knowledge that possessing an illegal firearm will result in a long prison sentence is supposed to prevent criminals from carrying a firearm. However, the certainty of a full conviction is often diminished by the normal practices and discretion that is inherent in the process of prosecution. Evidentiary issues involving burden of proof, such as witness reliability, constructive possession and prior felonies are reported to impact the ability to achieve a conviction on the Virginia Exile statutes.
- Although the Virginia Exile program is based on the design and function of the federal Project Exile program, comparisons of conviction outcomes are not appropriate. The cases that the U.S. Attorney's Office receives from the localities are reportedly "clean" cases; that is, charges are accurate and evidence is typically viewed as sufficient to achieve a conviction. Local Commonwealth Attorney's Offices, however, report that the cases they receive often have less accurate charges and scant evidence. Such complications are likely to reduce the conviction rate for the local prosecutor.

In sum, these conclusions reveal both positive and challenging aspects of the Virginia Exile program. While the data examined in this report represent just over a year of program operation, continued evaluation is necessary to soundly assess program impacts (e.g., reviewing gun-related crime trends both before and after program inception). A follow-up report is planned and will review additional findings. However, these interim findings have been useful to develop a number of preliminary recommendations, outlined below.

XI. Interim Recommendations

These interim recommendations are founded on both qualitative and quantitative data collected for this evaluation, and focus on continued program development. While all suggestions are designed to target issues for existing Virginia Exile programs, some recommendations are also relevant for any Virginia locality since they apply to the statewide firearms offense statutes that became effective on July 1, 1999.

Training

- 1. Specific information on statutes that govern Virginia Exile should be consistently reinforced in formal and informal training for magistrates and judges, both at the state and local level.***

According to training officials at the Virginia Supreme Court, both magistrates and judges are required to attend training each year to review any updated provisions of the Virginia Code. Current provisions include the no-bail presumption statute, subject to rebuttal, for offenses charged under Virginia Exile. However, a review of case-specific data revealed that bail was granted in more than 40% of cases in four of the six program sites. These percentages seem rather high, considering that these offenders should *typically* be denied bail.

Anecdotal evidence from Virginia Exile localities suggests that some magistrates may not be fully aware of the no-bail presumption component for relevant firearms statutes. Several Exile Commonwealth's Attorneys indicated that they had addressed this with the Chief Magistrate in their district to remedy such difficulties, and some improvements were noted. For example, establishing a cooperative agreement with Chief Magistrates to contact the Exile prosecutor when bail appears likely was reported to be a successful strategy in Chesapeake. In addition, judges are also granting bail in many cases. While Commonwealth's Attorneys and Exile prosecutors report that judges sometime set very high bail amounts, which essentially removes an offender's chances to attain bail, this is not always the case.

Supplementary training strategies may be needed at the state level to reinforce the presumption of no-bail requirement for these offenses. In addition, it is necessary that all magistrates and judges at the local level are aware of this requirement.

- 2. Curricula for law enforcement training on Exile-related issues should be examined to identify areas for potential enhancement, particularly with respect to evidentiary issues.***

Several Exile localities reported that local law enforcement agencies sometimes made arrests on charges under the Exile statutes that lacked necessary evidence to obtain a conviction. In addition, evidence was sometimes inadmissible due to search and seizure errors. A number of different strategies were used to minimize these difficulties, including instruction at police roll calls and assigning an Exile liaison officer to assist in keeping law enforcement officers informed. However, room for additional improvement exists. Strategies should include enhanced training for new law enforcement recruits that emphasizes improved accuracy of charges brought against Exile defendants, as well as more frequent law-related in-service training for all officers.

- 3. Development of a coordinated training curriculum for all Exile program sites is recommended to enhance training success.***

Development of a coordinated training curriculum may be useful to ensure enhanced training for law enforcement, magistrates, judges, and relevant court supervision staff. Training coordination at the state level, either via the state program monitor or an established state training committee, could facilitate a streamlined approach to problem-solving. In addition, this coordination body could act as a resource for training materials, which would build upon current informal efforts by

some localities to share such information. Commonwealth's Attorneys and necessary law enforcement personnel should be involved in this process to identify relevant training topics and trainers. As an additional training opportunity, grantees could be required to send program staff to coordinated training events as a condition of their grant award.

Coordination at the state level might also be useful to obtain and disseminate clarifications for Exile-relevant Code statutes and influential court rulings. Commonwealth's Attorneys report that such issues have arisen on several points since program inception, including proof of prior felony convictions (both for adult and juvenile offenses) and proof of firearm operability.

Review of Grant Requirements

4. The Virginia Exile grant program requirements should be reviewed to examine practicality, particularly regarding opposition to bail by Commonwealth's Attorneys.

Local Exile programs have identified difficulties in imposing the Exile no-bail provisions. As noted above, case data indicate that magistrates and judges frequently grant bail, even though the Code states that offenders charged with Exile offenses should typically be denied bail, subject to rebuttal. However, the Virginia Exile grant program guidelines go further by requiring Commonwealth's Attorneys in these localities to oppose bail for all Virginia Exile cases and appeal adverse bail decisions to a higher court. Half of the Exile Commonwealth's Attorneys stated that they may not object in many cases where bail is granted (which is confirmed by case-specific data) because judges generally do not reverse such decisions. In essence, the required objections and appeals that are outlined in the grant guidelines are not viewed as practical or a useful investment of time in most cases.

5. Technical assistance should be provided to Exile localities to facilitate establishment of local non-profit foundations and coordinate media efforts, when appropriate.

Virginia Exile grant program guidelines further require Commonwealth's Attorneys to establish local non-profit foundations for Virginia Exile to (1) build community support for mandatory sentencing, (2) increase public awareness via local media resources, and (3) implement marketing strategies that warn potential violators of consequences. Unfortunately, foundations have not been established in most sites, nor has the state-level Virginia Exile foundation realized their desired level of support. Exile localities report significant difficulties identifying interested parties and resources to pursue these efforts. Furthermore, the localities in this study have reported different types of challenges, in part due to regional population and economic variations.

If the foundation requirement is conceptualized as a critical component of the program, a coordinated technical assistance plan is needed. This plan could be coordinated at the state or local level, and should focus on both foundation start-up and dissemination of promising public awareness strategies. Local Exile programs may gain insight by sharing successful foundation-building ideas. For example, Chesapeake capitalized on an existing regional foundation, which was focused to bring together contributions from surrounding localities. This effort was successful, to some extent, due to the availability of shared media markets. Such innovative strategies should be shared with other localities that operate Exile programs.

Remaining Questions

6. *Program administrators and legislators should consider reviewing the scope of the Virginia Exile program, pending additional evaluation findings.*

At this point, data has been collected for 1.5 years of program operation. During that time period, 356 Exile charges have been initiated in the six evaluation localities. For the 249 Exile charges that were brought to Virginia courts, three Exile offenses (*possession of schedule I or II drugs while in possession of a firearm, non-violent felon in possession of a firearm, and violent felon in possession of a firearm*) comprised 96% (239) of these charges. The three remaining Exile offenses (*distribution of more than one pound of marijuana while in possession of firearm, distribution of schedule I or II drugs while in possession of a firearm, and possession of a firearm or weapon on school property*) are rarely charged. Administrators should contemplate the value of retaining these offenses in the Exile program for two reasons: (1) reducing the numbers of offense types applicable under the program could provide a clearer focus for the program philosophy, and (2) resources that are used to prosecute rarely used charges could be redirected to attack more prevalent problem areas.

In addition, at least two Commonwealth's Attorneys felt that some judges may be hesitant to convict offenders of drug residue cases with an Exile charge, particularly given the mandatory minimum sentence required. Such cases fall under the *possession of schedule I or II drugs while in possession of a firearm* statute, which mandates a 5-year sentence. Since the program aims to "reduce gun-violence" (DCJS, 1999, 2000), some Commonwealth's Attorneys suggest that residue cases may be below the standard of seriousness that is implied by the "spirit of the statutes."

Finally, one Commonwealth's Attorney noted that some philosophical differences seem apparent between the Virginia Exile program and the federal Project Exile program, on which the Virginia Exile program is based. To bridge this gap, one suggestion was to add an Exile offense category for possession of a firearm by a convicted domestic violence offender. At this time, the federal Project Exile program handles such cases while the Virginia Exile program does not.

7. *Evaluation of the Virginia Exile program should be continued to further address program implementation and outcomes.*

The Department of Criminal Justice Services should continue to evaluate the Virginia Exile program. Specifically, further evaluation should continue case-specific data collection in each current evaluation site. Because cases require several months to process through the court system, additional tracking data are needed to draw strong conclusions about sentencing impacts. In addition, a number of additional questions require further examination. Supplementary activities should include interviews of judges and magistrates for additional information about perspectives on the no-bail presumption and other issues, an examination of violent and firearm crime rate trends in the six Exile localities over time, assessments of the success of media campaign activities, and considering whether legislative modifications may be warranted. The information gleaned from this evaluation effort may be used to further develop the scope of Virginia Exile, guide implementation for new program sites, and clarify program outcomes.

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XIII. ACKNOWLEDGMENTS

The Virginia Exile evaluation staff would like to acknowledge the following individuals for their cooperation and assistance on this project. We would also like to thank Mike Costigan of DCJS and the DCJS Research Center staff for their assistance in this project. These individuals have provided valuable information and time for the Virginia Exile Evaluation.

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XVI. Appendices

Appendix 1

The following Virginia Code sections are associated with the Virginia Exile program.

§ 18.2-308.1. Possession of firearm, stun weapon, or other weapon on school property prohibited.

A. If any person possesses any (i) stun weapon or taser as defined in this section, (ii) knife, except a pocket knife having a folding metal blade of less than three inches, or (iii) weapon, including a weapon of like kind, designated in subsection A of § 18.2-308, other than a firearm, upon (a) the property of any public, private or parochial elementary, middle or high school, including buildings and grounds, (b) that portion of any property open to the public used for school-sponsored functions or extracurricular activities while such functions or activities are taking place, or (c) any school bus owned or operated by any such school, he shall be guilty of a Class 1 misdemeanor.

B. If any person possesses any firearm designed or intended to propel a missile of any kind while such person is upon (i) any public, private or parochial elementary, middle or high school, including buildings and grounds, (ii) that portion of any property open to the public used for school-sponsored functions or extracurricular activities while such functions or activities are taking place, or (iii) any school bus owned or operated by any such school, he shall be guilty of a Class 6 felony; however, if the person possesses any firearm within a public, private or parochial elementary, middle or high school building and intends to use, or attempts to use, such firearm, or displays such weapon in a threatening manner, such person shall not be eligible for probation and shall be sentenced to a minimum, mandatory term of imprisonment of five years, which shall not be suspended in whole or in part and which shall be served consecutively with any other sentence.

The exemptions set out in § 18.2-308 shall apply, mutatis mutandis, to the provisions of this section. The provisions of this section shall not apply to (a) persons who possess such weapon or weapons as a part of the school's curriculum or activities, (b) a person possessing a knife customarily used for food preparation or service and using it for such purpose, (c) persons who possess such weapon or weapons as a part of any program sponsored or facilitated by either the school or any organization authorized by the school to conduct its programs either on or off the school premises, (d) any law-enforcement officer while engaged in his duties as such, (e) any person who possesses a knife or blade which he uses customarily in his trade, or (f) a person who possesses an unloaded firearm which is in a closed container, or a knife having a metal blade, in or upon a motor vehicle, or an unloaded shotgun or rifle in a firearms rack in or upon a motor vehicle. For the purposes of this paragraph, "weapon" includes a knife having a metal blade of three inches or longer.

As used in this section:

"Stun weapon" means any mechanism that is (i) designed to emit an electronic, magnetic, or other type of charge that exceeds the equivalency of a five milliamp sixty hertz shock and (ii) used for the purpose of temporarily incapacitating a person; and

"Taser" means any mechanism that is (i) designed to emit an electronic, magnetic, or other type of charge or shock through the use of a projectile and (ii) used for the purpose of temporarily incapacitating a person.

§ 18.2-308.2. Possession or transportation of firearms, stun weapons, tasers or concealed weapons by convicted felons; penalties; petition for permit; when issued.

A. It shall be unlawful for (i) any person who has been convicted of a felony or (ii) any person under the age of twenty-nine who was found guilty as a juvenile fourteen years of age or older at the time of the offense of a delinquent act which would be a felony if committed by an adult, whether such conviction or adjudication occurred under the laws of this Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof, to knowingly and intentionally possess or transport any (a) firearm or (b) stun weapon or taser as defined by § 18.2-308.1, except in such person's residence or the curtilage thereof or to knowingly and intentionally carry about his person, hidden from common observation, any weapon described in subsection A of § 18.2-308. Any person who violates this section shall be guilty of a Class 6 felony. However, any person who violates this section by knowingly and intentionally possessing or transporting any firearm and who was previously convicted of a violent felony as defined in § 17.1-805 shall not be eligible for probation, and shall be sentenced to a minimum, mandatory term of imprisonment of five years. Any person who violates this section by knowingly and intentionally possessing or transporting any firearm and who was previously convicted of any other felony shall not be eligible for probation, and shall be sentenced to a minimum, mandatory term of imprisonment of two years. The minimum, mandatory terms of imprisonment prescribed for violations of this section shall not be suspended in whole or in part and shall be served consecutively with any other sentence. Any firearm, stun weapon or taser as defined by § 18.2-308.1, or any concealed weapon possessed, transported or carried in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § 18.2-310.

B. The prohibitions of subsection A shall not apply to (i) any person who possesses a firearm or other weapon while carrying out his duties as a member of the armed forces of the United States or of the National Guard of Virginia or of any other state, (ii) any law-enforcement officer in the performance of his duties, or (iii) any person who has been pardoned or whose political disabilities have been removed pursuant to Article V, Section 12 of the Constitution of Virginia provided the Governor, in the document granting the pardon or removing the person's political disabilities, may expressly place conditions upon the reinstatement of the person's right to ship, transport, possess or receive firearms.

C. Any person prohibited from possessing, transporting or carrying a firearm, stun weapon or taser under subsection A, may petition the circuit court of the jurisdiction in which he resides for a permit to possess or carry a firearm, stun weapon or taser; however, no person who has been convicted of a felony shall be qualified to petition for such a permit unless his civil rights have been restored by the Governor or other appropriate authority. The court may, in its discretion and for good cause shown, grant such petition and issue a permit. The provisions of this section shall not apply to any person who has been granted a permit pursuant to this subsection.

§ 18.2-308.4. Possession of firearms while in possession of certain controlled substances.

A. It shall be unlawful for any person unlawfully in possession of a controlled substance classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) of Title 54.1 to simultaneously with knowledge and intent possess any firearm.

B. It shall be unlawful for any person to possess, use, or attempt to use any pistol, shotgun, rifle, or other firearm or display such weapon in a threatening manner while committing or attempting to commit the illegal manufacture, sale, distribution, or the possession with the intent to manufacture, sell, or distribute a controlled substance classified in Schedule I or Schedule II of the Drug Control Act (§ 54.1-3400 et seq.) of Title 54.1 or more than one pound of marijuana.

Violation of this section shall constitute a separate and distinct felony and any person convicted thereof shall be guilty of a Class 6 felony, shall not be eligible for probation, and shall be sentenced to a minimum, mandatory term of imprisonment of five years, which shall not be suspended in whole or in part. Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony.

C. Any firearm possessed in violation of this section shall be forfeited to the Commonwealth pursuant to the provisions of § 18.2-310.

§ 19.2-120. Admission to bail.

Prior to conducting any hearing on the issue of bail, release or detention, the judicial officer shall, to the extent feasible, obtain the person's criminal history.

A. A person who is held in custody pending trial or hearing for an offense, civil or criminal contempt, or otherwise shall be admitted to bail by a judicial officer, unless there is probable cause to believe that:

1. He will not appear for trial or hearing or at such other time and place as may be directed, or
2. His liberty will constitute an unreasonable danger to himself or the public.

B. The judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if the person is currently charged with:

1. An act of violence as defined in § 19.2-297.1;
2. An offense for which the maximum sentence is life imprisonment or death;
3. A violation of §§ 18.2-248, 18.2-248.01, 18.2-255 or § 18.2-255.2 involving a Schedule I or II controlled substance if (i) the maximum term of imprisonment is ten years or more and the person was previously convicted of a like offense or (ii) the person was previously convicted as a "drug kingpin" as defined in § 18.2-248;

4. A violation of §§ 18.2-308.1, 18.2-308.2, or § 18.2-308.4 and which relates to a firearm and provides for a minimum, mandatory sentence;
 5. Any felony, if the person has been convicted of two or more offenses described in subdivision 1 or 2, whether under the laws of this Commonwealth or substantially similar laws of the United States;
 6. Any felony committed while the person is on release pending trial for a prior felony under federal or state law or on release pending imposition or execution of sentence or appeal of sentence or conviction; or
 7. An offense listed in subsection B of § 18.2-67.5:2 and the person had previously been convicted of an offense listed in § 18.2-67.5:2 and the judicial officer finds probable cause to believe that the person who is currently charged with one of these offenses committed the offense charged.
- C. The court shall consider the following factors and such others as it deems appropriate in determining, for the purpose of rebuttal of the presumption against bail described in subsection B, whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of the public:
1. The nature and circumstances of the offense charged;
 2. The history and characteristics of the person, including his character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and
 3. The nature and seriousness of the danger to any person or the community that would be posed by the person's release.
- D. The judicial officer shall inform the person of his right to appeal from the order denying bail or fixing terms of bond or recognizance consistent with § 19.2-124.

§ 19.2-121. Fixing terms of bail.

If the person is admitted to bail, the terms thereof shall be such as, in the judgment of any official granting or reconsidering the same, will be reasonably fixed to assure the appearance of the accused and to assure his good behavior pending trial. The judicial officer shall take into account (i) the nature and circumstances of the offense; (ii) whether a firearm is alleged to have been used in the offense; (iii) the weight of the evidence; (iv) the financial resources of the accused or juvenile and his ability to pay bond; (v) the character of the accused or juvenile including his family ties, employment or involvement in education; (vi) his length of residence in the community; (vii) his record of convictions; (viii) his appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings; (ix) whether the person is likely to obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate a prospective witness, juror, or victim; and (x) any other information

available which the court considers relevant to the determination of whether the accused or juvenile is unlikely to appear for court proceedings.

In any case where the accused has appeared and otherwise met the conditions of bail, no bond therefore shall be used to satisfy fines and costs unless agreed to by the person who posted such bond.

Appendix 2

Process of Arrest Through Sentencing

<u>Stage</u>	<u>Authority</u>	<u>Description</u>
Arrest		
First Appearance	Magistrate	Charges filed Pre-trial release determination
Advisement <i>(arraignment in some localities)</i>	Judge	Within 48 hours of First Appearance Counsel assigned Preliminary Hearing date set
Preliminary Hearing <i>General District Court</i>	Judge	Within 1-3 months of arrest Finding of probable cause Pleas entered for misdemeanor charges Misdemeanor charges heard Felony charges certified to a Grand Jury or dismissed Charges may be nol prossed or dismissed and brought again later by direct indictment if necessary. If case is to be transferred to the U.S. Attorney, charges are usually nol prossed here.
Grand Jury	Jurors	Charges indicted to Circuit Court
Arraignment	Judge	Pleas entered for Circuit Court Defendant requests or waives a jury trial
Trial <i>Circuit Court</i>	Judge/Jury	Felony charges heard If convicted, can be sentenced here or at a separate sentencing hearing

Appendix 3

GLOSSARY OF LEGAL TERMS (Webster's Legal Dictionary)

Advisement: The initial appearance before a judge in a criminal case. In some localities, this is also termed "arraignment." Here, counsel is assigned and the Preliminary Hearing date is set. A determination of bail may be made here.

Arraignment: The initial appearance before a judge in a criminal case. In some localities, this is also termed "advisement." At an arraignment, the charges against the defendant are read, a lawyer is appointed if the defendant cannot afford one. A defendant's plea is entered at arraignment if it occurs prior to a trial in Circuit Court.

Circuit Court: A charge comes to trial in Circuit Court after having been indicted by a grand jury. Typically, felony charges are tried in Circuit Court and may be heard by a judge or a trial jury.

Direct Indictment: Also referred to as "straight indictment," a charge may be directly indicted to a grand jury by the prosecutor, thereby circumventing the Preliminary Hearing.

First Appearance: In this report, First Appearance refers to the point at which the suspect is brought before a magistrate, charges are filed against him or her, and a determination of bail is made.

General District Court: This is where Preliminary Hearing is held.

Grand Jury: A jury convened in a criminal case to consider the prosecutor's evidence and determine whether probable cause exists to prosecute a suspect for a felony.

Indictment: The formal charge issued by a grand jury stating that there is enough evidence that the defendant committed the crime to justify having a trial.

Nolle Prosequi (Nol Pros): An entry made on the record, by which the prosecutor or plaintiff declared that he/she will proceed no further. A nolle prosequi does not operate as an acquittal, for a defendant may be afterwards re-indicted.

Preliminary Hearing: The prosecutor presents evidence to a judge in an attempt to show that there is probable cause that a person committed a crime. If the judge is convinced probable cause exists to charge the person, then the prosecution proceeds to the grand jury. If not, the charges are dropped, or direct indicted by the prosecutor to the grand jury.